

NOTICE OF PRELIMINARY DRAFT OF
PROPOSED AMENDMENTS TO LOCAL RULES
U.S. DISTRICT COURT, DISTRICT OF ALASKA.

Comments are sought on proposed amendments to Local Rules

[Civil, Criminal, and Magistrate]

All Comments received become part of the permanent files on the rules.

Written comments on the preliminary draft rules are due not later than August 31, 2005

Address all communications on rules to:

United States District Court, District of Alaska
Attention: Court Rules Attorney
222 West Seventh Avenue, MS 4
Anchorage, Alaska 99513-7564
or
e-mail to AKD-Rules@akd.uscourts.gov

CONTENTS

LR 1.1	Scope and Purpose of the Rules
LR 3.3	Venue; Place of Trial; and Filing in Satellite Offices
LR 5.1	Filing and Proof of Service When Service Required by Rule 5, Federal Rules of Civil Procedure
LR 5.2	Service on Parties by the Court
LR 5.3	Electronic Case Filing
LR 7.4	Proposed Orders
LR 10.1	Form of Pleadings and Other Papers
LR 11.1	Appearances, Substitution and Withdrawal
LR 39.3	Exhibits
LR 54.3	Award of Attorney's Fees
LR 79.1	Court Record; Notice of Filing; Docketing; Copies
LR 79.2	Books and Records of the Clerk
LR 83.1	Attorneys
LCrR 49.1	Electronic Case Filing
LMR 4	Civil Matters Routinely Assigned to Magistrate Judges
LMR 6	Objections to Matters Under 28 USC §636(b)(1) in Criminal Matters

Rule 1.1 Scope and Purpose of the Rules.

(a) **Title and Citation.** These rules may be known as the Local Rules of the United States District Court for the District of Alaska and cited as "D. Ak. LR _____."

(b) **Scope.** These rules apply to all civil proceedings governed by Rule 1, Federal Rules of Civil Procedure.

(c) **Purpose.**

(1) These rules will be administered and construed:

[A] to secure the just, speedy, and inexpensive determination of every action; and

[B] wherever appropriate, in a manner consistent with the Alaska Rules of Civil Procedure.

(2) In any matter not covered by these rules, the court may regulate its practice in any manner not inconsistent with the Federal Rules of Civil Procedure and these rules.

(d) **Rules of Construction and Definitions.**

(1) The United States Code, title 1, §§ 1 through 5, as far as applicable, govern the construction of these rules.

(2) The following definitions apply:

[A] "Former local rules" means the General Rules for the United States District Court for the District of Alaska in effect immediately prior to July 17, 1995.

[B] The terms "judge" or "court," unless specifically indicated otherwise, mean:

(i) a United States District Court Judge for the District of Alaska on active or senior status;

(ii) a United States Court of Appeals, District Court Judge, or judge of the International Court of Trade, on active, senior, or retired status, designated to act as a District Court Judge for the District of Alaska for one or more cases under the provisions of 28 U.S.C. §§132(c), 291(b), 292(b) and (d), 293(a), or 294;

(iii) a United States Magistrate Judge for the District of Alaska; and

(iv) to the degree these rules apply to bankruptcy proceedings, a United States Bankruptcy Judge for the District of Alaska or a bankruptcy judge on active or recalled status, designated to act as a bankruptcy judge for the District of Alaska under the provisions of 28 U.S.C. § 155.

[C] As used in these rules, the term "conventional filing" means the physical filing of the paper original of a pleading or other document by delivery to the Clerk of the Court.

(3) If a party is appearing in an action unrepresented by counsel, all references in these rules to "counsel" or "attorneys" are to be construed to refer to the party.

Related Provisions:

1 U.S.C. § 1	Words denoting number, gender and so forth
1 U.S.C. § 2	"County" as including "parish", and so forth
1 U.S.C. § 3	"Vessel" as including all means of water transportation
1 U.S.C. § 4	"Vehicle" as including all means of land transportation
1 U.S.C. § 5	"Company" or "association" as including successors and assigns
28 U.S.C. § 132	Creation and Composition of district courts
28 U.S.C. § 152	Appointment of bankruptcy judges
28 U.S.C. § 155	Temporary transfer of bankruptcy judges
28 U.S.C. § 291	Circuit Judges
28 U.S.C. § 292	District Judges
28 U.S.C. § 293	Judges of the Court of International Trade
28 U.S.C. § 294	Assignment of retired Justices or judges to active duty
28 U.S.C. § 631	Appointment and tenure [Magistrate Judges]
28 U.S.C. § 2071	Rule-making power generally
F.R.Civ.P. 83	Rules by District Courts; Judge's Directives

COMMENT: Adds subparagraph (d)(2)[C] to provide a definition of conventional filing.

Draft

Rule 3.3 Venue; Place of Trial; and Filing in Satellite Offices.

(a) **Original Actions.** An action in which venue is proper in the United States District Court for the District of Alaska may be commenced in any location specified in 28 U.S.C. § 81A.

(b) **Removed Actions.**

(1) If an action commenced in state court is removed to federal court, the notice of removal may be filed in:

- [A] Anchorage;
- [B] Fairbanks;
- [C] Juneau;
- [D] Ketchikan; or
- [E] Nome.

(2) the clerk must promptly transfer the removed action to:

- [A] the location in the same state judicial district as the state court in which it was filed; and
- [B] the same city if there is a federal location in that city.

(c) **Conventional Filing of Pleadings.**

(1) In cases where venue is proper in Anchorage, complaints and subsequent pleadings, motions, papers, and other documents, may only be filed conventionally in Anchorage; and

(2) except as provided in paragraph (3), in all other cases, complaints and subsequent pleadings, motions, papers, and other documents, may be filed conventionally in either Anchorage or the location of the court in which venue lies.

(3) All documents filed by delivery utilizing the U.S. Postal Service, Fed-Ex, UPS, DHL, or similar service, are to be filed in the Anchorage office only.

(4) In all cases in which a hearing or trial is scheduled, all pleadings, motions, papers, and other documents required for the hearing or trial filed conventionally less than five business days before the scheduled event must be—

- [A] filed in the location where the hearing or trial is to be held, and
- [B] if the presiding judge does not maintain chambers in that location, an additional copy filed in the location where the presiding judge maintains chambers.

(d) **Intra-District Transfer.** The court may decide on motion of a party or its own motion whether the action should be transferred to another location for case management or trial.

Related Provisions:

28 U.S.C. § 81A Alaska
28 U.S.C. § 1391 Venue
28 U.S.C. § 1441 Actions removable generally
28 U.S.C. § 1446 Procedure for removal

COMMENT: 3.3(c) amended to make the place of filing applicable solely to conventionally filed documents.

3.3(c)(3) [new]: Provides that documents that are sent by mail or courier they are to be sent to the Anchorage Office for processing.

3.3(c)(4) [current 3.3(c)(3) renumbered without substantive change.]

Rule 5.1 Filing and Proof of Service When Service is Required by Rule 5, Federal Rules of Civil Procedure.

(a) **Proof of Service.** Proof of service under Rule 5, Federal Rules of Civil Procedure must be made by:

- (1) the recipient's acknowledgment of service; or
- (2) through certification of the person making the service, which certification must include—
 - [A] the person or persons upon whom it was served,
 - [B] the means of service, and
 - [C] the date it was served.
- (3) [A] Unless impractical, proof of service should be reflected on the document served, not on a separate document.
[B] Where a document includes attachments, *e.g.*, exhibits, affidavits, or a proposed order, unless otherwise indicated in the certificate of service for the principal document, the certificate of service for the principal document also constitutes a certificate that the attachments were served concurrently therewith.

(b) **Facsimile Filing.** Pleadings or documents may not be filed by facsimile transmission to the court, unless specifically authorized in advance by the court.

(c) **Electronic Service.**

(1) Except as provided in D.Ak. LR 5.3(c)(2), written consent to service by electronic transmission must be filed with the court and served on the other party(ies) to the action.

(2) The consent to service by electronic transmission should indicate:

- [A] the method of electronic service acceptable;
- [B] whether the party consents to service by facsimile of pleadings and documents in excess of twenty-five (25) pages;
- [C] whether the party will accept service of pleadings by e-mail in a format other than Adobe Acrobat portable document format ("pdf"), and, if so, the alternative format that is acceptable;
- [D] the number of the party's facsimile machine; and
- [E] the party's e-mail address.

(d) **Special Conditions.**

(1) Any pleading, motion, paper or other document that exceeds twenty-five (25) pages in length, including all attachments and exhibits thereto, may not be served by facsimile unless the party to be served has expressly consented to receive lengthy documents by facsimile.

(2) Consent to service by e-mail constitutes consent to service of pleadings and documents in Adobe Acrobat portable document format ("pdf").

(e) **Inmate Filing and Service.** A document filed or served by an inmate confined in an institution is timely filed or served if deposited in the institution's internal mail system on or before the last day for filing or service.

(1) Timely filing or service of a document by an inmate confined in an institution may be shown by a notarized statement or declaration under 28 U.S.C. § 1746, setting forth the date of deposit and stating that first-class postage has been pre-paid or that the inmate has taken the required steps to have prison officials affix postage.

(2) For purposes of calculating response times under these rules and the Federal Rules of Civil Procedure, parties responding to a document mailed by an incarcerated litigant are entitled to rely on the postmark date as the date of service by mail and not the date that the inmate deposited the document in the prison's internal mail system.

Related Provisions:

28 U.S.C. § 1746 Unsworn declarations under penalty of perjury

F.R.Civ.P. 5 Serving and Filing Pleadings and Other Papers

F.R.Civ.P. 6 Time

COMMENT: Subparagraph (a)(3)[B] amended to provided that a certificate of service of a principal document presumptively includes simultaneous service of the attachments to it. This is consistent with actual practice. The rule as currently worded, *i.e.*, requiring that the attachments be specifically referenced in the certificate to the principal document is generally disregarded. Also, the change to CM/ECF, electronic service automatically includes all the attachments. Paragraph (c)(1) has been amended to be consistent with the provisions of new LR 5.3(c)(2).

Rule 5.2 Service Upon Parties by the Court.

(a) **Orders.** Unless otherwise ordered by the court, the clerk of the court will serve all orders and other papers prepared by the court and filed in a case upon all parties to that case electronically or by mailing a copy to the party's attorney of record, if represented, or to the party if appearing without counsel.

(b) **Multiple Attorneys.** Where a party is represented by more than one attorney, unless otherwise ordered by the court, service will be upon the attorney first appearing for the party.

(c) **Proof of Service.**

(1) Proof of mailing is established by notation of the names of the attorneys, or litigants who are not represented by counsel, to whom a mailing was made, the date thereof, and the initials of the deputy clerk on the foot of each order or other paper served.

(2) Proof of electronic service is established by the "Notice of Electronic Filing" generated by the CM/ECF System.

Related Provisions.

F.R.Civ.P. 5	Serving and Filing Pleadings and Other Papers
F.R.Civ.P. 6	Time

COMMENT: Subsection (a) is amended to provide for service electronically as well as by mail. Subsection (c) has been amended. Current subsection (c) is now contained in ¶ (c)(1). New ¶ (c)(2) provides the means by which proof of electronic service is established.

Rule 5.3 Electronic Case Filing

(a) Cases Assigned to CM/ECF System.

(1) Except as otherwise provided by this rule or order of the court, all pleadings, papers, and documents filed in all civil cases in this district on or after January 3, 2006, must be filed electronically utilizing the CM/ECF System.

(2) In a case assigned to the Electronic Filing System after it has been opened, parties who are Filing Users, or are represented by Filing Users, must promptly provide the clerk with electronic copies of all documents previously provided in paper form.

(b) Procedures.

(1) The filing of documents in electronic format will be in accordance with this rule and the CM/ECF administrative procedures promulgated by the Clerk of the Court.

(2) Participants in the Case Management/Electronic Case Filing ("CM/ECF") System are responsible for ensuring that current filing procedures are followed.

(c) Registration.

(1) Password.

[A] (i) Each attorney admitted to practice under D.Ak LR 83.1(c) or appearing under D.Ak LR 83.1(e), who files pleadings, documents, or papers in cases assigned to the CM/ECF system, must obtain a CM/ECF System password to permit the attorney to participate in the electronic retrieval and filing of pleadings and other papers in accordance with the CM/ECF System electronic filing procedures.

(ii) Exceptions to the requirements of subparagraph (1)[A](i) must be approved by the Chief Judge and will be granted only upon motion for good cause shown.

(iii) Attorneys in outlying areas of the state that do not have access to high speed (256 kbs, or higher) internet access may be exempted from the requirements of subparagraph (1)[A](i) until such time as high speed (256 kbs, or higher) internet access becomes available in the area in which the attorney maintains the attorney's principal office. Any request for exception under this provision must be accompanied by an affidavit showing the availability and cost of internet access in the area.

[B] Attorneys admitted to practice under D.Ak LR 83.1(d) may be entitled to one CM/ECF System password to permit the attorney to participate in the electronic retrieval and filing of pleadings and other papers in accordance with the CM/ECF System electronic filing procedures.

[C] An individual may become registered to participate in the CM/ECF System upon completion of training and submission of a Certification for CM/ECF form to the court.

(2) *Consent to Electronic Notice and Service.* Participation in the CM/ECF System by receipt of a password from the court, constitutes:

[A] a request for service of notice electronically under Rule 49(b), Federal Rules of Criminal Procedure and Rule 5(b), Federal Rules of Civil Procedure; and

[B] consent to receive notice and service by electronic means in each case in which a formal entry of appearance as a party or attorney for a party has been made.

(3) Unauthorized Use of Passwords.

[A] No registered participant may knowingly permit or cause to permit the participant's password to be utilized by anyone other than an authorized employee of the participant or the participant's firm.

[B] No person may knowingly utilize or cause another person to utilize the password of a registered participant unless the person is an authorized employee of the participant or the participant's firm.

(4) Compromised Password.

[A] Each registered participant in the CM/ECF System is responsible for maintaining the integrity of the participant's password.

[B] In the event a registered participant has reason to believe that the password issued to the participant has been compromised or otherwise may be subject to use by an unauthorized person, the participant must immediately notify the Clerk of the Court in writing or by e-mail and request cancellation of the existing password and issuance of a new password.

(5) *Withdrawal.*

[A] A registered participant may withdraw from participation in the CM/ECF System by providing the Clerk of Court with written notice of withdrawal.

[B] Upon receipt of a written notice of withdrawal, the Office of the Clerk will immediately cancel the participant's password and delete the participant from any applicable electronic service list.

[C] Unless otherwise ordered by the court, withdrawal by an attorney from participation in the CM/ECF System does not relieve the attorney of the obligation to comply with paragraph (1).

(d) **Signatures.**

(1) *Registered Participant.* The electronic filing of a petition, complaint, indictment, pleading, motion or other paper by a registered participant in the CM/ECF System constitutes the signature of that participant under Rule 11, Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before this court.

(2) *Other Documents.* The signature page of any electronically filed pleading or paper not governed by paragraph (1) must bear a digitally imaged (scanned) original signature.

(3) *Verified Documents.* Subject to paragraphs (1) and (2), verified documents (affidavits or declarations under penalty of perjury as provided in 28 U.S.C. § 1746), are to be filed electronically.

(4) *Objections to Authenticity of Signatures.* Any objection to the authenticity of a signature on an electronically filed document must be served on the filing party and filed with the court not later than 10 days after the document is served.

(e) **Electronic Filing.**

(1) *Mandatory Electronic Filing.* Except as expressly otherwise provided in this Rule or in exceptional circumstances that prevent a participant from filing electronically, all petitions, complaints, indictments, motions, pleadings, memoranda of law, or other documents required to be filed with the court in connection with a case assigned to the CM/ECF System must be electronically filed by participants in the CM/ECF System.

(2) *Related Documents.* All documents must be filed separately, except that exhibits to a document must be filed as attachments to that document under the same docket number.

[A] Where documents related to a motion or other pleading are being filed concurrently with the motion or other pleading, e.g., a motion, memorandum of law and a supporting affidavit, the related documents must be filed separately and shown as being a document related to the motion or other pleading.

[B] If documents being submitted electronically have lengthy exhibits, the filing of relevant excerpts of the exhibits is preferred and permitted without prejudice to the right of any party to file additional excerpts or the complete exhibit with the court at any time.

(3) *Emergency Motions.*

[A] Emergency motions, supporting pleadings and objections are to be filed electronically as provided in this rule.

[B] The party filing the motion must promptly advise the Clerk's Office of the filing as provided in the CM/ECF Procedures promulgated by the Clerk of the Court.

(4) *Lodged Documents.* Unless otherwise ordered by the court, participants in the CM/ECF System must submit all documents required under the rules to be lodged with the court, e.g., proposed orders, findings of fact and conclusions of law, and judgments, electronically, in accordance with the CM/ECF administrative procedures promulgated by the Clerk of the Court.

(f) **Service.**

(1) The filing party must serve the pleading or other paper being electronically filed upon all persons entitled to service in accordance with otherwise applicable rules.

(2) If a person entitled to notice or service is a registered participant in the CM/ECF System in the case in which the pleading or other paper is being filed, service by electronic means of the Notice of Electronic Filing is deemed the equivalent of service of the pleading or other paper by first class mail, postage prepaid.

(g) **Special Filing Requirements.** Electronic or conventional filing of the following documents is governed by the provisions of this subsection:

(1) *Documents to be Filed under Seal.*

[A] All documents to be filed under seal and motions to file documents under seal are to be filed as provided in the CM/ECF administrative procedures promulgated by the Clerk of the Court.

[B] The party filing a document under seal is responsible for effecting service of the document as provided in the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, or the Local Rules of this court.

(2) *Exhibits to Pleadings.*

[A] Wherever possible, documents being filed as exhibits, including but not limited to leases, notes, and the like, should be electronically imaged (*i.e.*, "scanned") and filed as part of the document referring to the exhibit using Portable Document Format (pdf).

[B] Exhibits that are not available in electronic form are to be filed conventionally, attached to a copy of the Notice of Electronic Filing for the electronically filed document to which the exhibit(s) relate.

(3) *Complaints/Summonses/Civil Cover Sheets.* All complaints, civil cover sheets (JS 44), and summonses to be issued by the court are to be filed as provided in the CM/ECF administrative procedures promulgated by the Clerk of the Court.

(4) *Trial and Hearing Exhibits.*

[A] Exhibit lists, to the extent that the filing thereof is required by the rules otherwise applicable to the trial or hearing, are to be filed electronically.

[B] The actual exhibits are to be submitted conventionally as provided by the rules otherwise applicable to the trial or hearing.

(5) *Transcripts.*

[A] Whenever possible, transcripts, or the relevant portions thereof, not otherwise converted to electronic format, should be electronically imaged (*i.e.*, "scanned") and filed as part of the document referring to the transcript using Portable Document Format (pdf).

[B] Transcripts that are not available in electronic format are to be filed conventionally, attached to a copy of the Notice of Electronic Filing for the electronically filed document to which the transcript(s) relate.

(6) *Service of Conventionally Filed Documents.* Except as otherwise provided by order of the court, the party filing pleadings or other documents conventionally under this subsection is responsible for effecting service in the manner provided for in the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure and Local Rules of this court.

(h) **Fees.**

(1) Any required fee may be paid as provided in the CM/ECF administrative procedures.

(2) Unless other arrangements are made with the Clerk of Court, any required fee for a document filed electronically not paid electronically must be mailed to the Clerk of the Court not later than the next business day or hand delivered to the Clerk of the Court not later than the second business day next immediately following the filing.

(3) Unless otherwise ordered by the court, no summons or other process will be issued until such time as any required filing fee is received by the Clerk of the Court.

(i) **Technical Failures.**

(1) If a participant in the CM/ECF System is unable to transmit a time-critical document electronically due to technical failure of either the CM/ECF System or the participant's system, or due to internet congestion or internet service provider problems, the participant must promptly contact the Clerk of the Court and make alternate arrangements for filing the document in electronic format during normal working hours.

(2) Unless exceptional circumstances exist that prevent the document from being transmitted during regular business hours, the participant must make every effort to transmit any time-critical document during regular business hours on the date the document is due.

(j) **Consequences for Noncompliance.** Any misuse of the CM/ECF System, or intentional noncompliance with its requirements, may result in revocation of the participant's login and password privileges and/or the imposition of sanctions as provided in District of Alaska Local Rule 1.3.

Related Provisions:

COMMENT:

Subsection (a): Establishes the CM/ECF program and makes compliance with the Procedural manual mandatory.

Subsection (b): Paragraph (1) makes participation by attorneys admitted to practice in this district, including governmental attorneys, other than those admitted *pro hac vice*, in those cases assigned to the CM/ECF system mandatory. Participation by attorneys appearing *pro hac vice* is voluntary (however, if participating in the CM/ECF program, those attorneys are held to same standards). It also recognizes that a few attorneys who practice in outlying areas may not have access to high-speed internet access, which if not available places an almost intolerable burden on the electronic filer. These attorneys may be excepted from the mandatory participation requirement. Paragraph (2) makes consent to electronic service automatic by participation in the CM/ECF system. This is a universal provision in all districts and is consistent with the underlying philosophy of CM/ECF, *i.e.*, the elimination of paper. Paragraph (3) is essential to maintain system integrity. Restricting it to attorneys (no permissive use by other firm members/employees) would enhance integrity but ignores the fact that most document preparation will be staff not the attorney. It is the responsibility of the attorney to insure that staff personnel are adequately and properly trained and supervised. Paragraph (4) emphasizes the necessity for integrity by providing for the cancellation of a compromised password. Determining when the extent to which password integrity is breached is, for the most part, in the discretion of the participant. Paragraph (5) covers withdrawal from the system.

Subsection (c): Paragraph (1) makes participation by attorneys admitted to practice in this district, including governmental attorneys, other than those admitted *pro hac vice*, in those cases assigned to the CM/ECF system mandatory. Participation by attorneys appearing *pro hac vice* is voluntary (however, if participating in the CM/ECF program, those attorneys are held to same standards). It also recognizes that a few attorneys who practice in outlying areas may not have access to high-speed internet access, which if not available places an almost intolerable burden on the electronic filer. These attorneys may be excepted from the mandatory participation requirement on a case-by-case basis. No provision is made in the proposed local rule at this time for participation in ECF by *pro se* parties.

Subsection (c) Con't: Paragraph (2) makes consent to electronic service automatic by participation in the CM/ECF system. This is a universal provision in all districts and is consistent with the underlying philosophy of CM/ECF, *i.e.*, the elimination of paper. The model rule provision regarding an e-mail address was omitted as unnecessary. There is no known reason for a participant having internet access not to have an e-mail address. Paragraph (3) is essential to maintain system integrity. Restricting it to attorneys (no permissive use by other firm members/employees) would enhance integrity but ignores the fact that most document preparation will be staff not the attorney. It is incumbent on the attorney to insure that staff personnel are adequately and properly trained and supervised. Paragraph (4) emphasizes the necessity for integrity by providing for the cancellation of a compromised password. Determining when the extent to which password integrity is breached is, for the most part, in the discretion of the participant. Paragraph (5) permits an attorney to withdraw from participation in the CM/ECF System; however subparagraph (5)[C] makes clear that although a participant may withdraw from participation, that withdrawal does not relieve the person from complying with the CM/ECF filing requirements.

Subsection (d): Paragraph (1) dispenses with the requirement that a document filed by a participating attorney bear the actual signature of the attorney. Paragraph (2) requires all other "signed" documents bear a scanned image of the signature. Paragraph (3) provides that even affidavits and declarations are filed electronically, subject to the requirement that the document bear the imaged signature (or deemed signed if the participant is the signatory to the document). [Note: Some courts require the paper bearing the original signature to be filed with the court. This requirement appears to be contrary to the 1996 amendment to FED. R. CIV. P. 5(e) authorizing electronic filing and the committee comment: "An electronic filing that complies with the local rule satisfies all requirements for filing on paper, signature, or verification. An electronic filing that otherwise satisfies the requirements of 28 U.S.C. § 1746 need not be separately made in writing." It is also contrary to the underlying principle of electronic filing—the reduction of paper handled by the clerk's office.]

Subsection (e): Paragraph (1) makes clear that ECF is not optional for participants in the ECF System. Paragraph (2) permits the use of excerpts from exhibits, *e.g.*, reference may be made to only 2 or 3 pages of a 30-page document. This permits a filing to be limited to those 2 or 3 pages without requiring the filing of the remaining pages of the document. However, it does not interfere with the right any party to file either additional excerpts or the complete document. Paragraph (3) governs emergency motions, which are to be also filed electronically. Telephonic notification of the judicial staff is the substitute for the current practice in conventional filing. Paragraph (4) addresses proposed orders, findings, judgments requiring signature by the court.

Subsection (f): Implements in part the provisions of ¶ (b)(2) by providing that electronic notice is the equivalent of notice by mail.

Subsection (g): Subparagraph (1)[A] refers the user to the administrative procedures manual for instructions on filing documents under seal. It is anticipated that for the first six months to a year of going live, registered users will not be permitted to file documents under seal electronically. When the understanding of the system capabilities and their use have matured to the point that the integrity of sealed documents will not be compromised, the administrative procedures may be amended to permit filing of sealed documents electronically either on a selective or across-the-board basis, as appropriate. Subparagraph (1)[B] makes clear that the party filing a document under seal is responsible for effecting service; an electronic notice will not be generated by the system.

Paragraph (2) imposes on the filer the responsibility for converting documents to electronic format. It is expected that only items such as oversize photographs, charts, maps, and similar items will be filed conventionally. All others should be scanned and filed electronically.

Subsection (g) Con't: Under paragraph (4), other than the exhibit list itself which required to be filed is to be filed electronically, exhibits to be introduced at a hearing or trial are introduced in the conventional manner.

Paragraph (5) requires that all transcripts that are not otherwise available in electronic format be scanned and filed electronically unless that is not possible.

Under ¶(6), the party filing documents conventionally is responsible to effecting service. Conventionally filed documents may or may not be scanned and, if not, no electronic notice of filing will be generated.

Subsection (h): Provides for electronic (credit card) payment of any required fees when documents are filed electronically. If not paid electronically, the required fee must be mailed by the following business day or hand delivered by the second business day after the document is filed.

Subsection (i): Places the onus on the filer to make alternative arrangements for filing time critical documents *in electronic format* when system problems prevent filing electronically. Only in the most exigent circumstances will a registered participant be permitted to file a document conventionally.

Rule 7.4 Proposed Orders.

(a) Dispositive Motions.

(1) Unless otherwise ordered by the court, parties may, but are not required to, serve and lodge with a dispositive motion, or opposition to a dispositive motion, a proposed order for the court to issue.

(2) "Dispositive" motions are:

[A] motions to dismiss made under Rule 12, Federal Rules of Civil Procedure; and

[B] motions for summary judgment under Rule 56, Federal Rules of Civil Procedure.

(b) **Routine Motions.** A proposed order must be filed with routine non-dispositive motions or oppositions to the motion.

(c) Form of Order.

(1) A proposed order must be self-explanatory and may not require a review of the motion to understand the order.

(2) If the proposed order is for an extension of time or modification of time deadlines, it must include a date certain by which the matter sought to be extended will be accomplished.

(d) **Electronically Filed.** Proposed orders are to be transmitted electronically to the court as provided in D.Ak. LR 5.3(e)(4).

(e) **Conventionally Filed.** The court may allow parties to submit proposed orders for dispositive motions on a computer disk in a computer language compatible with the court's computer system.

Related Provisions:

D.Ak. LR 5.3 Electronic Case Filing

D.Ak. LR 7.1 Motion Practice

D.Ak. LR 7.2 Hearings

COMMENT: Adds new subsection (d) governing electronic transmittal of proposed orders. The CM/ECF administrative procedures require proposed orders to be submitted via e-mail in WordPerfect format.

Subsection (e) is former ¶ (b)(3) without substantive change.

Rule 10.1 Form of Pleadings and Other Papers

(a) Form in General.

(1) All pleadings, motions, affidavits, memoranda, instructions, and other papers and documents presented for filing, conventionally or electronically, with the clerk or intended for the use by the court must be:

[A] in either double-spaced or one-and-one-half spaced typewriting or printing, except that lengthy quotations should be single-spaced and indented;

[B] have margins all around of at least one (1") inch, exclusive of identification printed on the stationery;

[C] if consisting of more than one (1) page, at the bottom of each consecutive page—

(i) contain a page number, and

(ii) have a footer including the case name and number; and

[D] all printed matter appear in at least 11-point type, ten-pitch (10 characters per inch) or 12-point proportionally-spaced font.

(2) Conventionally filed documents must be:

[A] upon letter size (8½ by 11) white paper of good quality, of at least 16-pound weight, not onionskin, except where ripple finish or other opaque paper is used, in which event the weight must be at least 13-pound; and

[B] either in original clear and legible typewriting with black ribbon, or in clear and legible printing in black ink.

(3) Electronically filed documents must be in Adobe Acrobat Portable Document Format (".pdf").

(b) Chambers Copy.

(1) Every pleading, document, or paper exceeding twenty-five (25) pages filed conventionally or electronically must be accompanied by a complete and legible copy for use by the judge in chambers.

(2) Chambers copies are not part of the official file in the case and are not open to public inspection.

(c) Exhibits.

(1) All exhibits to pleadings must be:

[A] numbered progressively according to the number of the page of the exhibit, preceded by the number or identification of the exhibit, e.g., "Ex. A, p. 1"; provided that

[B] exceptions to progressive numbering of exhibits may be permitted by the court where acceptable copies of original documents make it impractical to comply with that requirement.

(2) If more than five (5) exhibits are attached, the exhibits must be preceded by a table of contents identifying each exhibit by number and description.

(3) Exhibits attached to the chambers copy, including exhibits filed conventionally under D.Ak. LR 5.3(g)(2)[B], must be:

[A] identified by attached tabs in a manner that the tab identifying the exhibit is readily visible; and

[B] permanently attached to the pleading or document to which they apply in a manner to be easily accessible and readable without detaching from the principal document.

(d) **Interlineation – One Side of Paper to Be Used.** All pleadings and other papers must be without interlineation unless noted by the court, and printed or written upon only one side of the paper.

(e) **Information to Be Placed on First Page.** The first page of each pleading, motion, affidavit, brief, judgment, order, and instructions must be prepared as provided in this subsection.

(1) *Attorney's or Party's Name/Address.*

[A] The name, address, telephone number, facsimile number, and e-mail address of the attorney appearing for a party to an action or proceeding, or of a person appearing without an

attorney, must be typewritten or printed in the space to the left of center of the paper beginning at least 1½ inches below the top edge, or

[B] the attorney's name, address, telephone number, facsimile number and e-mail address may be printed on the left-hand margin of the paper.

[C] The attorney must identify the party the attorney represents.

(2) *Title of the Court.* The title of the court is to be centered on the paper and commence not less than 1½ inches below the top edge, and in any event not less than ½ inch below the name, address, and telephone number of the attorney or person appearing without an attorney if this appears at the top of the page as provided in paragraph (e)(1).

(3) *Clerk's Filing Marks; Case Number.*

[A] A space above the title of the court and to the right of center on the page must be reserved for the filing marks of the clerk; and

[B] below that the file number of the action or proceeding, including the initials of the judge assigned, is to be inserted.

(4) *Title of Action or Proceeding.* Below the title of the court and to the left of center of the page the title of the action or proceeding is to be inserted.

[A] In the event all defendants cannot be named on the first page, the names of defendants only may appear on the second page.

[B] Except for complaints and summons, lengthy captions may be reduced to indicate a single-named party as plaintiff or defendant followed by "*et al.*"

(5) *Description of Pleading.* Below the title of the court and file number, and either centered or to the right of center of the page, a brief designation of the nature of the paper and, where relief is sought, the nature thereof is to be inserted.

(f) **Information to be Placed on Signature Page.**

(1) Names are to be typed beneath signatures to pleadings and other papers.

(2) An attorney must identify each party the attorney represents.

(g) **Citation of Statute.** A party filing a complaint, counterclaim or cross-claim seeking relief under any specific statute should cite the statute relied upon in parentheses following the title of the pleading.

(h) **Reference to Other Parts of Pleading.**

(1) Where practical, reference to other portions of the same pleadings or other papers should be made to avoid repetition.

(2) [A] In any action brought upon or any proceeding involving serial notes, bonds, coupons or obligations for the payment of money that are of the same form, tenor and effect, and are issued under the same law, or by the same authority, and differing only in number, date of maturity or amount, it is sufficient for the plaintiff to set forth in one claim of the complaint one note, bond, coupon, or obligation, either verbatim or according to legal effect.

[B] The remaining notes, bonds, coupons or obligations may be pleaded, in the same or another claim of the complaint, by a general reference or description sufficient to identify them with like effect as if they had been set forth verbatim.

[C] Similar practice may be followed in any pleading where any two or more documents of similar form, tenor or effect are set forth.

(3) Any document referred to in any pleading may be set forth either in the body of the pleading or in an exhibit attached thereto.

(i) **Replacing Papers Lost or Withheld.** If an original paper or pleading is lost or withheld by any person, the court may order a verified copy to be filed and used in lieu of the original.

(j) **Judge's Name Typed on Orders.** On all orders prepared for signature, the name of the ordering judge, if known, should be typed immediately under the signature line prior to presentation for signature.

(k) **Jurisdictional Statement.** The short and plain statement of jurisdictional grounds required by Rule 8(a), Federal Rules of Civil Procedure, should be at the beginning of the complaint, with citations to any federal statutes or constitutional provisions upon which jurisdiction may be based.

(l) **Length.** Unless otherwise ordered, principal briefs or memoranda of law in civil and criminal cases (including appeals) may not exceed fifty (50) pages and replies may not exceed twenty-five (25) pages, exclusive of pages containing a table of contents, table of citations, or reproductions of statutes, rules, regulations, ordinances, *etc.*

(m) **Exclusion of Personal Identifying Data**

(1) In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers from all pleadings filed with the court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the court.

[A] **Social Security numbers.** If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.

[B] **Names of minor children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.

[C] **Dates of birth.** If an individual's date of birth must be included in a pleading, only the year should be used.

[D] **Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.

[E] **Home addresses.** If a home address must be included, only the City and State should be used.

(2) In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may:

[A] file an unredacted document under seal, which will be retained by the court as part of the record; or

[B] file a reference list under seal, which will be retained by the court as part of the record—

(i) containing the complete personal data identifier(s) and the redacted identifier(s) used in its(their) place in the filing,

(ii) all references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete identifier, and

(iii) may be amended as of right.

(3) Unless the court orders otherwise, a redacted copy of a document filed in accordance with subparagraph (3)[A] must be filed for the public file.

(4) The responsibility for redacting personal identifiers rests solely with counsel and the parties. The Clerk will not review each pleading for compliance with this rule.

(5) A party filing a document that does not comply with this subsection may, upon the motion of the injured party, be subject to sanctions and/or damages as appropriate and necessary under all the facts and circumstances.

Related Provisions:

F.R.Civ.P. 6 Time

F.R.Civ.P. 7 Pleadings Allowed; Form of Motions

F.R.Civ.P. 8 General Rules of Pleading

F.R.Civ.P. 9 Pleading Special Matters

F.R.Civ.P. 10 Form of Pleadings

F.R.Civ.P. 12 Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings

F.R.Civ.P. 13	Counterclaim and Cross-Claim
F.R.Civ.P. 14	Third-Party Practice
D.Ak. LR 5.3	Electronic Case Filing
D.Ak. LR 7.1	Motion Practice
D.Ak. LR 15.1	Motions to Amend
D.Ak. LR 38.1	Notation of Jury Demand in Pleading

COMMENT: Subsections (a), (b), and (c) have been amended to differentiate between conventionally and electronically filed documents. Paragraph (a)(1) is applicable to all pleadings. Subparagraph (a)(1)(C) amended to include the case name and number on each successive page, e.g., Smith v. Jones, Case No. A05-01010 CV(JWS), so that should a page become detached it can more readily restored to its proper place. Paragraph (a)(2) retains the current requirements for conventional (paper) filings. Paragraph (a)(3) reiterates the requirement that electronically filed documents be in pdf.

Paragraph (b)(1) has been amended to require a chambers copy only if the document exceeds 25 pages. NOTE: Might consider restricting this requirement to electronically filed documents. The original of conventionally filed documents may become the “chambers copy” after it is scanned.

Paragraphs (c)(1) and (2) apply to all exhibits. Paragraph (c)(3) retains the requirement that the exhibits be tabbed for the chambers copy. Tabbing for the original of conventionally filed documents is not retained as tabbing would interfere with scanning by the clerk’s office.

Subsection (m) has been added to comply with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002. This subsection complies with the local rule suggested by the Judicial Conference. Under ¶(m)(3) the filing if a redacted document for the public file available on line is the norm. Only with leave of the court may a party not file an unredacted copy. Under ¶(m)(5), a party who files a document that contains unredacted personal identifying information may be subjected to sanctions if another person is injured by disclosing the information.

Rule 11.1 Appearances, Substitution, and Withdrawal.

(a) Entry of Appearance.

(1) Unless the context clearly indicates otherwise, the filing of a pleading, paper, or document by an attorney for or on behalf of a party constitutes an entry of appearance on behalf of the party by the attorney signing the pleading, document, or paper, and no separate entry of appearance need be filed.

(2) Partnerships, corporations, and associations must be represented by an attorney.

(3) [A] A party that has appeared by counsel may not thereafter appear or act in the party's own behalf in the action unless an order of substitution has been entered by the court, after notice to the attorney of the party and all other parties.

[B] The court may, in its discretion, hear a party in open court notwithstanding the fact that the party is represented by counsel.

(4) [A] Parties appearing without an attorney are bound by these rules and the Federal Rules of Civil Procedure.

[B] A party proceeding without an attorney must at all times keep the court and other parties advised of the party's current address and telephone number.

(b) **Notification of Change of Address.** Not more than five (5) days after a change of address, telephone or facsimile number or e-mail address, an attorney who has entered an appearance in a matter must file and serve on all parties to the proceeding a notice of change of address, telephone, facsimile number and/or e-mail address.

(c) **Substitution and Withdrawal.** Withdrawal as counsel requires leave of the court.

(1) A motion for leave to withdraw must be accompanied by:

[A] written consent of the client;

(ii) substitution of counsel and formal appearance of substituting counsel; or

(iii) a showing of good cause.

(2) [A] Any party or attorney may oppose the motion, and

[B] the court may deny the motion even if consented to or unopposed.

(3) If the withdrawal would leave the party without an attorney of record, the motion must:

[A] provide the party's last known address and telephone number, and

[B] the attorney proposing to withdraw must arrange a hearing and give the client at least twenty (20) days written notice of the hearing, unless good cause is shown why a hearing should not be required.

(4) Notwithstanding the foregoing, attorneys employed by a governmental entity may substitute as counsel without leave of court and without written consent of the client provided all parties to the action are immediately notified of the substitution, with notice including the full name, mailing address, telephone and facsimile numbers and e-mail address of the substituting attorney.

Related Provisions:

D. Ak. LR 83.1 Attorneys

COMMENT: As revised, LR 11.1 is a combination of existing LR 11.1 and LR 83.1(f).

11.1(a)(1) is current LR 11.1(a) without substantive change. Paragraphs (a)(2), (3), and (4), are current LR 83.1(f)(2), (4) and (1), respectively, without substantive change.

11.1(b) remains unchanged with the exception of including the e-mail address among the items the change of which requires notification be given.

11.1(c) is current LR 83.1(f)(3) without substantive change.

Rule 39.3 Exhibits.

(a) **General.** Except as may be otherwise ordered by the court, exhibits will be managed as provided by this subsection.

(1) At least fourteen (14) days before trial or at least three (3) days prior to the deadline for submission of exhibits under a pretrial order in the case, whichever is earlier, counsel must meet with a deputy clerk to review trial exhibits.

(2) Plaintiff will arrange the time for this exhibit review.

(3) [A] (i) At the time set, all exhibits must be available for inspection by opposing counsel and the deputy clerk.

(ii) Trial will not be recessed or delayed to permit counsel to read or examine exhibits.

[B] (i) Large or bulky exhibits that cannot be readily transported to the office of the deputy clerk must be made available at a reasonable time and location prior to the meeting with the deputy clerk for examination by opposing counsel.

(ii) If available, photographs or other representations of large or bulky exhibits must be included with the exhibits marked under this rule.

(4) Prior to the exhibit review, parties will obtain from the deputy clerk exhibit labels that counsel must affix to proposed exhibits, marking the same with numbers for plaintiff and letters for defendant in the approximate order of anticipated use of the exhibits.

[A] With the approval of the deputy clerk, the parties may stipulate prior to marking exhibits that an exhibit identification scheme other than that provided by this rule be used.

[B] Depositions and deposition excerpts that are to be used for any purpose at trial must be marked as exhibits and included on an exhibit list as provided by this rule.

(5) The parties must stipulate at the exhibit review meeting to admissibility of those exhibits to which there will be no objection, which exhibits are to be marked "ADM."

[A] Exhibits marked "ADM" are evidence, without need for foundation or further offer at trial, and no objections will be heard regarding their admissibility.

[B] Exhibits not admitted by stipulation are to be marked for identification only, "ID."

(6) Within three (3) days after the exhibit review session:

[A] each party must serve and file an exhibit list, in the form of a pleading, identifying by number or letter those exhibits marked for admission and those marked for identification, and briefly describing each exhibit; and

[B] a copy of all exhibits that can be photocopied, including depositions, must be lodged for use by the court, and a copy provided to opposing counsel, which copies—

(i) will be photocopied subsequent to the exhibit review meeting bearing all the information required by paragraphs (a) (2) and (3), and

(ii) original labels should not be used on the court's copy of exhibits.

(7) Exhibits not presented according to this rule will not be admitted except upon a showing of good cause.

(8) Exhibits are to be retained by the parties between the marking session and trial, and will not be stored by the court.

(9) Counsel will maintain custody of all exhibits during trial, see that they are properly marked when identified and admitted, and keep them organized for ready access by opposing counsel, the court, and witnesses during trial.

[A] All exhibits admitted on a party's behalf must be immediately available at the conclusion of trial for submission to the jury or the court during deliberations.

[B] Prior to submission of the exhibits to the jury, counsel must meet with the clerk and review all parties' exhibits to assure that all admitted exhibits are segregated for submission, and no non-admitted exhibits are submitted.

(10) Immediately after a jury verdict or findings of fact by the court, the exhibits will be returned to the custody of respective counsel and must be retained by them pending appeal and final disposition of the case.

(b) Custody of Drugs, Cash, Firearms and Other Sensitive Exhibits

(1) Any cash, drugs, firearms, weapons, and other sensitive items, presented to the Court for admittance as evidence must be presented in a sealed bag identifying the exhibit and marked not to be opened except under order of the court.

(2) The attorney or party offering to introduce any firearm or other weapon into evidence must:

[A] provide written notification to the Supervisory Deputy in the Office of the United States Marshal of the intent to introduce the firearm or weapon not later than two (2) business days prior to the date the firearm or weapon is to be brought to the courtroom, including—

(i) identity of the person who will have physical possession or custody of the firearm or weapon; and

(ii) a complete, detailed description of the firearm or weapon, including, if applicable, the serial number; and

[B] prior to the first day of trial or the date of the hearing at which the firearm or weapon is to be introduced into the courtroom, coordinate with the Supervisory Deputy to have a Deputy United States Marshal physically secure the firearm or weapon to make it safe for handling.

[C] The United States Marshal is authorized to promulgate such forms for the purposes of providing the United States Marshal with such notice and additional information as the United States Marshal may, in the discretion of the United States Marshal, deem appropriate or necessary.

(3) The attorney for the party offering the exhibit will retain custody of the exhibit and is responsible for the exhibit during trial including recesses.

(4) [A] Sensitive items admitted into evidence and submitted to the jury for deliberation become the responsibility of the jury bailiff during deliberations.

[B] Upon the return of a verdict or discharge of the jury, the attorney for the party offering the exhibits must immediately take custody of the item.

(c) Digital Evidence Presentation System. To utilize the Digital Evidence Presentation System (“DEPS”), a party must:

(1) contact the court Automation Specialist (907-677-6112) not less than two (2) weeks in advance of the hearing or trial to arrange for necessary training and familiarization; and

(2) file a notice of intent to use DEPS not less than three (3) business days before the hearing or trial including in the notice—

[A] the date, and

[B] division in which the hearing or trial is to be held.

(d) Applicability to Criminal Cases. Except for the pre-trial exhibit marking procedures in paragraphs (a)(1)–(5), this rule applies to criminal cases.

<p>Comment: Subsection (b) amended by adding new ¶(2) add to provide for notification of the U.S. Marshal and the rendering of firearms and weapons safe prior to introduction into the courtroom. Former ¶¶(b)(2) and (3) redesignated (3) and (4) respectively without substantive change.</p>
--

Rule 54.3 Award of Attorney's Fees

(a) **Motion.** A motion for attorney's fees under Rule 54(d)(2), Federal Rules of Civil Procedure, must:

- (1) state the amount requested;
- (2) set forth the authority for the award, whether Rule 82, Alaska Rules of Civil Procedure, a federal statute, contractual provision, or other grounds entitling the moving party to the award; and
- (3) be accompanied by an affidavit that provides—
 - [A] total number of hours worked and billing rate for each lawyer and paraprofessional,
 - [B] the amount charged to the client, if any, and
 - [C] has attached as exhibits bills sent or other detailed itemization as may be appropriate.

(b) **Diversity Cases.** [Abrogated]

Related Provisions:

28 U.S.C. § 1875	Protection of juror's employment
28 U.S.C. § 1927	Counsel's liability for excessive costs
28 U.S.C. § 2412	Costs and Fees
28 U.S.C. § 2465	Return of property to claimant; liability for wrongful seizure; attorney fees, costs and interest
F.R.Civ.P. 54	Judgments; Costs
Alaska Civ.R 82	Attorney's Fees

COMMENT: Paragraph (a)(3)[A] amended to include the billing rate as well as hours and include paraprofessionals as well as attorneys.

Subsection (b) is abrogated as unnecessary and potentially misleading. The applicability of Alaska Rule of Civil Procedure 82 in diversity cases is well established in this circuit. See, e.g., *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 883–84 (9th Cir. 2000); *Klopfenstein v. Pargeter*, 597 F.2d 150, 152 (9th Cir. 1979). Thus, in most diversity cases brought in this district, attorney's fees may be awarded under Alaska Rule of Civil Procedure 82. The principal exception being in those few instances where the case is transferred to this district from another district. In that situation, the law of the transferor district provides the applicable law of the forum. Rule 82 may also apply in non-diversity cases, e.g., where the court exercises supplemental jurisdiction over pendent state law claims and Alaska law provides the substantive rule of decision. See *Champion Produce, Inc. v. Ruby Robinson, Co.*, 342 F.3d 1016, 124–25 (9th Cir. 2003); *Krommenhoek v. A-Mark Precious Metals, Inc. (In re Bybee)*, 945 F.2d 309, 315–16 (9th Cir. 1991) (necessity of allocation between the federal and state law claims).

Rule 79.1 Court Record; Notice of Filing; Docketing; Copies

(a) **CM/ECF System.** When a document has been filed electronically or is filed conventionally and scanned into the CM/ECF System by the Clerk of the Court, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed.

(b) **Notice of Electronic Filing.**

(1) *Notice to Filing Party.* Whenever a pleading or other paper is filed electronically in accordance with CM/ECF System Procedures, the System will automatically generate a "Notice of Electronic Filing" by electronic means at the time of docketing.

(2) *Effect of Notice.* Except in the case of documents first filed conventionally and subsequently submitted electronically, a document filed electronically is deemed filed on the date at the time stated on the Notice of Electronic Filing.

(c) **Docketing.**

(1) *Entry on Docket.* The electronic filing of a pleading or other paper in accordance with CM/ECF System procedures constitutes entry of that pleading or other paper on the docket kept by the Clerk of the Court under Rules 58 and 79, Federal Rules of Civil Procedure and Rules 49 and 55, Federal Rules of Criminal Procedure.

(2) *Entry of Orders and Judgments.*

[A] All orders, decrees, judgments, and proceedings of the court will be entered in accordance with CM/ECF System Procedures, which constitutes entry of the order, decree, judgment, or proceeding on the docket kept by the clerk under Rules 58 and 79, Federal Rules of Civil Procedure and Rules 49 and 55, Federal Rules of Criminal Procedure.

[B] Routine orders may be issued as "text-only" on the docket, without an attached document.

COMMENT:

Subsection (a): Makes the CM/ECF System the official Court record.

Subsection (b): The "Notice of Filing" acknowledges receipt of the electronically filed document the same as a "conformed" copy using conventional filing.

Subsection (c): A CM/ECF System filed document, including court orders, is a "docketed" item without the necessity for the clerk's office to make a separate EOD entry.

Rule 79.2 Books and Records of the Clerk.

(a) **Clerk's Custody.** Except as otherwise provided by this rule or order of the court, no record or paper belonging to the files of the court may be taken from the office or custody of the Clerk of the Court.

(1) If any record or paper in the court files is needed as an exhibit or other purpose, the Clerk of the Court will prepare a certified copy upon payment of the appropriate fee.

(2) After entry of final judgment, the completion of any post-judgment proceedings, the filing of any mandates, and the expiration of any time limits for additional proceedings:

[A] all models, diagrams, and exhibits not already in the custody of the parties, will be returned to the party or person to whom they belong, except as may otherwise be ordered by the court under D. Ak. LR 7.1 and D. Ak. LR 39.3; and

[B] if items are not retrieved by the parties within a reasonable time after the clerk has provided notice, the Clerk of the Court may destroy all models, diagrams, and exhibits or may make such other disposition of them as the court may approve.

(3) Large physical exhibits unsuitable for filing with the case file must:

[A] be retained following trial by the party introducing them into evidence until judgment is final; and

[B] the parties are responsible for producing the exhibits if required for an appeal record.

(4) Nothing in this rule prevents the court from ordering other disposition with respect to any files, models, and exhibits as may be deemed advisable.

(b) Use of Files by Judges, Law Clerks, and Court Personnel.

(1) If it is necessary for a judge, magistrate judge, law clerk, or other person upon approval of the court to use materials in a file at a place other than the clerk's office, either the Clerk of the Court or the person checking out the materials will prepare a checkout slip so that the file can quickly be located.

(2) Original files and papers from files must remain in the clerk's office, judge's chambers, or courtroom, except as may be ordered by the judge to whom the case is assigned.

(3) Files must remain in the locality where the case was filed, or to which venue was changed, except as may otherwise be ordered by the judge to whom the case is assigned.

(c) Documents Presented For In Camera Review.

(1) Except where it would compromise essential secrecy, when papers are filed or lodged for in camera review, a cover paper providing some general description must be attached, so that the Clerk of the Court can make a descriptive docket entry.

(2) The papers must be provided in sealed envelopes or other sealed containers, with the words prominently written on them, "To be opened only by or at the direction of the judge," or "... or by the magistrate judge" as may be appropriate.

(3) No one, including personnel in the clerk's office and the judge's chambers, may open a sealed envelope or package except the judge assigned to the case or by order of the judge assigned to the case

(4) Anyone who opens a sealed envelope must:

[A] reseal it; and

[B] write on the envelope or container—

(i) the identity of the person opening the sealed documents or papers, and

(ii) the date(s) of opening and resealing.

(5) Attorneys must not quote or reveal the substance of in camera materials in papers filed unsealed.

(d) Access to Public Records; Copies.

(1) A person may review at the clerk's office all filings that have not been sealed by the court, whether retained in paper or electronic format.

(2) Documents, other than documents sealed by the court, filed electronically or converted to and stored in electronic format may be accessed and retrieved at the court's internet site (<http://www.akd.uscourts.gov>) by obtaining a PACER log-in and password.

(3) [A] Conventional copies and certified copies of conventionally or electronically filed documents may be obtained from the clerk's office.

[B] A fee for copying and certification will be charged and collected in accordance with the Miscellaneous Fee Schedule promulgated by the Judicial Conference of the United States.

Related Provisions:

28 U.S.C. § 1734 Court record lost or destroyed, generally

28 U.S.C. § 1914 District Court; filing and Miscellaneous Fees; Rules of Court

Miscellaneous Fee Schedule

F.R.Civ.P. 26 General Provisions Governing Discovery; Duty of Disclosure

F.R.Civ.P. 79 Books and Records Kept by the Clerk and Entries Therein

D.Ak. LR 7.1 Motion Practice

D.Ak. LR 39.3 Exhibits

COMMENT: Subsection (d) added to provide information on how and where to access court files and to obtain copies.

Rule 83.1 Attorneys.

(a) Eligibility.

(1) Except as otherwise provided in this rule, any attorney admitted to practice as an attorney and counselor at law before the courts of the State of Alaska, is eligible for admission to practice in the United States District Court for the District of Alaska.

(2) Active members of the bar of this court may appear and act in all respects on behalf of parties anywhere in the District of Alaska unless the court finds good cause to require association with an active member of the bar of this court residing in the place within the district where the case is pending.

(b) **Law Clerks.** No individual serving as a law clerk to a judge of this court may engage in the practice of law while continuing in such position. After separating from that position, practice as an attorney in connection with any case pending during the individual's term of service before the judge for whom the individual worked will be limited by Rule 1.11, Alaska Rules of Professional Conduct.

(c) Procedure for Admission.

(1) All attorneys admitted to practice before the former District Court for the Territory of Alaska on February 20, 1960, are admitted to practice in this court without further procedure for admission.

(2) Each applicant for admission must file with the clerk a petition stating:

[A] all names by which the applicant has been known;

[B] residence and office addresses; and

[C] the names and addresses of all courts before which the applicant has been admitted to practice and dates of—

(i) admission, and

(ii) suspension or other such action on account of disability or other reason in any of the jurisdictions or courts before which the applicant has practiced.

(3) The petition must be:

[A] accompanied by a certificate signed by a justice or the clerk of the Alaska Supreme Court or the Executive Director of the Alaska Bar Association bearing a date not more than ninety (90) days prior to the date of the application; and

[B] served on the Alaska Bar Association.

(4) After a twenty-day period for the filing of objections has elapsed, the court will determine whether to order admission, and, if admission is ordered, the clerk will issue a certificate of admission.

(5) The court may, on its own motion or in response to an objection, make further inquiry of the applicant or others and determine what response to objection, hearing, or other procedures are appropriate.

(6) Service of the petition on the Alaska Bar Association and the objection period does not apply for new admittees to the Alaska Bar Association if the petition for admission is filed in this court within sixty (60) days of the date the Alaska Bar Association certifies the person for admission to the Alaska Supreme Court.

(7) An accepted applicant must take an oath substantially in the form as may be prescribed from time to time by the Administrative Office of the United States Courts or by miscellaneous general order of this court.

(d) Non-Resident Attorneys.

(1) [A] A member in good standing of the bar of another jurisdiction, who is not an active member of the bar of this court, may, upon motion, be permitted by the court to appear and participate on behalf of a party, but non-local counsel will ordinarily be required to associate with an active member of the bar of this court.

[B] The court may permit a member in good standing of the bar of another jurisdiction, on a sufficient showing, to appear and participate without association with an active member of the bar of this court.

(2) [A] Unless otherwise ordered by the court:

- (i) the attorney applying may appear and participate from the time of filing as though it had been approved, and
- (ii) approvals will be deemed to be effective as of the time of filing of the motion.

[B] The motion must either designate a member of the bar of this court in accord with the above paragraphs or show cause why, in accord with the above paragraphs, no association should be required.

[C] Motions for leave to participate without local counsel will not be approved as a matter of course, and if denied, a party represented by non-local counsel will be given a reasonable period within which to associate local counsel.

(3) If a non-local attorney appears for a party, whether from outside the district of Alaska or outside the location within the district where the proceeding is located, the court may at any time during the proceeding, on motion of a party or its own motion, for good cause, require association of local counsel.

(4) The motion must be accompanied by the affidavit or declaration of the attorney seeking admission, which affidavit or declaration must:

[A] Contain—

- (i) all names by which the applicant is known,
- (ii) the applicant's office and residence addresses,
- (iii) name and address of each jurisdiction or court to which the applicant has been admitted to practice and the year of admission to each,
- (iv) a statement that the applicant is not the subject of any pending disciplinary action in any jurisdiction or before any court to which the applicant has been admitted to practice,
- (v) all relevant information, including dates, of any suspension, disbarment, or similar action, on account of disability or other reason, in any jurisdiction or court to which the applicant has been admitted to practice, and
- (vi) certification that the applicant has read the local rules of this court; and

[B] Be accompanied by a certificate of good standing from a jurisdiction or court to which the applicant has been admitted to practice.

(e) **Attorneys for the United States Government and the Federal Public Defender Agency.**

(1) Any attorney representing the United States Government, or any agency thereof, or any attorney employed by the Federal Public Defender's Office may appear and participate in particular cases in an official capacity without submitting a petition for admission, provided the attorney is admitted to practice and in good standing before the highest court of any state.

(2) If the attorney is not a resident of this District, the resident United States Attorney or Federal Public Defender, as the case may be, must be associated initially, but upon application demonstrating good cause, the court may dispense with such association.

(f) **Appearances, Substitution, and Withdrawal.** *[Abrogated]*

(g) **Disbarment and Suspension.**

(1) [A] Whenever it appears to the court that any member of the bar of this court or any non-resident attorney permitted to appear or who has applied to appear before this court has been disbarred, suspended from practice, or convicted of a serious crime as defined by the Alaska Bar Rules, or similar authority in a state other than Alaska, the attorney will be immediately suspended from practice before this court.

[B] Unless good cause to the contrary is shown within five (5) days after notice has been mailed to the attorney's last known place of business or residence, an order of suspension or disbarment will be entered for such time as the court fixes.

(2) If a suspended attorney requests, in writing, reinstatement to practice before the court, and the court has received notification that the attorney has been reinstated to practice before the courts

of the State of Alaska or such other courts where the suspended attorney practices, an order of reinstatement may be entered.

(h) Contact with Trial Jurors.

(1) No attorney admitted to practice or appear before this court may:

[A] seek out, contact, or interview at any time any juror of the jury venire of this court; or

[B] without prior approval of the court, allow, cause, permit, authorize or in any way participate in any contact or interview with any juror relating to any case in which the attorney has entered an appearance.

(2) This subsection will be posted in the jury rooms of this District and jurors will be instructed fully as to this matter.

(i) Professional Conduct. Every member of the bar of this court and any attorney admitted to practice or appear in this court must:

(1) be familiar with and comply with the Standards of Professional Conduct required of the members of the State Bar of Alaska and contained in the Alaska Rules of Professional Conduct and decisions of any court applicable thereto, except insofar as those rules and decisions are otherwise inconsistent with federal law;

(2) maintain the respect due courts of justice and judicial officers; and

(3) perform with the honesty, care, and decorum required for the fair and efficient administration of justice.

(j) Current Address. All persons admitted to practice before the United States District Court for the District of Alaska should notify the clerk of the court, in writing, of any change in address, telephone or facsimile number, or e-mail address not later than thirty (30) days after the change in address, telephone or facsimile number, or e-mail address becomes effective.

(k) Admission Fee. Each attorney applying for admission to practice in this district must pay at the time of application for admission the following fee:

(1) for admission under subsection (c), \$100.00 plus the fee required under the District Court Miscellaneous Fee Schedule promulgated by the Judicial Conference of the United States; or

(2) for admission under subsection (d), \$150.00.

Related Provisions:

Alaska Rules of Professional Conduct

D.Ak. LR 11.1 Appearances, Substitutions and Withdrawals

COMMENT: Subsection (d) amended to include the attorney's e-mail address in the information to be provided to the court.

Subsection (f) moved to LR 11.1.

LOCAL CRIMINAL RULES

Rule 49.1 Electronic Case Filing

(a) Cases Assigned to CM/ECF System.

(1) Except as otherwise provided by this rule or order of the court, all pleadings, papers, and documents filed in all criminal cases in this district on or after January 3, 2006, must be filed electronically utilizing the CM/ECF System.

(2) In CVB cases, pleadings and documents are filed conventionally.

(b) **Procedures.** Except as otherwise provided in this rule, the filing of documents in electronic format will be in accordance with D.Ak. LR 5.3.

(c) Special Filing Requirements for Criminal Cases.

(1) *Indictments.*

[A] Indictments must be presented to the court in conventional (paper) format; and

[B] On a disk in electronic (.pdf) format as follows—

(i) the entire indictment with the name and/or signature of the jury foreperson redacted, and

(ii) as a separate document, the signature page bearing the digitally imaged (“scanned”) signature of the jury foreperson.

(2) *Warrants and Summonses.*

[A] Warrants and summonses may be filed conventionally or electronically in accordance with the CM/ECF administrative procedures promulgated by the Clerk of the Court.

[B] Warrants and summonses may be issued electronically.

(3) *CJA Documents.* CJA Documents will be filed as provided in the CJA Plan and CJA Compensation Policy Manual adopted by the court and the CM/ECF Procedures promulgated by the Clerk of the Court.

Related Provisions:

D.Ak. LR 3.3	Venue; Place of Trial; Filings in Satellite Offices
D.Ak. LR 5.2	Service on Parties by the Court
D.Ak. LR 5.3	Electronic Case Filing
D.Ak. LR 10.1	Form of Pleadings and Other Papers
D.Ak. LR 79.1	Court Record; Notice of Filing; Docketing; Copies
D.Ak. LR 79.2	Books and Records of the Clerk

COMMENT:

49.1(a) assigns all criminal cases except CVB cases to CM/ECF system.

49.1(b) incorporates the general local rule related to CM/ECF filings.

49.1(c) governs three special matters related solely to criminal cases: indictments; warrants/summonses; and CJA documents. The signature page of the indictment will be filed under seal. All CJA documents, unless otherwise ordered by the court will also be filed under seal.

NOTE: It is believed that conversion to electronic format should be made the responsibility of the filer, not the clerk’s office.

LOCAL MAGISTRATE JUDGE RULES

Rule 4. Civil Matters Routinely Assigned to Magistrate Judges

Unless otherwise provided by order of a district judge, the following civil matters will be assigned to magistrate judges for disposition or findings and recommendations as appropriate:

- (1) administrative inspection warrants;
- (2) Matters relating to nonpayment of seaman's wages;
- (3) *Habeas Corpus* petitions initiated under 28 U.S.C. § 2254;
- (4) Motions Attacking Sentence under 28 U.S.C. § 2255;
- (5) preferred ship mortgage foreclosures;
- (6) matters relating to the arrest, seizure, or release of vessels and other property under the Supplemental Rules for Certain Admiralty and Maritime Claims; and
- (7) matters relating to the enforcement of administrative subpoenas.

Related Provisions:

26 U.S.C. § 7604	Enforcement of Summons
28 U.S.C. § 636	Jurisdiction, powers and temporary assignment
28 U.S.C. § 2254	State custody; remedies in Federal courts
28 U.S.C. § 2255	Federal custody; remedies on motion attacking sentence
F.R.Civ.P. 54	Judgments; Costs
F.R.Civ.P. 72	Magistrate Judges; Pre-trial Orders
F.R.Civ.P. 73	Magistrate Judges; Trial by Consent and Appeal Option
Admiralty Rule C	Actions in Rem; Special Proceedings
Admiralty Rule E	Actions in Rem and Quasi in Rem; General Provisions
D.Ak.LMR 2	Authority of Magistrate Judges

COMMENT: Several civil matters automatically referred to magistrate judges were eliminated, including Internal Revenue Service summonses; payments of seamen's wages; social security act cases; ERISA trustee collections; §1983 prisoner suits; Miller Act cases; cost bill reviews; and collection actions by United States.

Rule 6. Objections to Matters under 28 U.S.C. § 636(b)(1) in Criminal Matters.

(a) **Pleadings.** Unless otherwise ordered:

(1) an objection to non-dispositive orders entered under 28 U.S.C. § 636(b)(1)(A) or initial findings and recommendations entered under 28 U.S.C. § 636(b)(1)(B) is to be filed within the time specified in Federal Rule of Criminal Procedure 59;

(2) any reply to the objection must be filed within five (5) days after any objection is filed; and

(3) no briefs, other than the objection and reply will be permitted.

(b) **Initial Review by Magistrate Judge.** Unless otherwise ordered, the objection will be routed to the magistrate judge who:

(1) will promptly examine the pleadings and documents related to the objection;

(2) may—

[A] conduct such further hearings as deemed necessary, and

[B] make additional, supplemental or substitute findings and recommendations; and

(3) will, when the action deemed appropriate has been taken—

[A] forward final findings and recommendations to the district judge, and

[B] mail a copy to the parties.

(c) **Review by District Judge.**

(1) Unless leave of court is obtained, for good cause shown:

[A] objections are limited to those matters fairly presented to or raised before the magistrate judge; and

[B] new matters or issues may not be raised for the first time in an objection to the findings and recommendations of a magistrate judge.

(2) The court may, on its own motion or the motion of any party, set the matter for a further evidentiary hearing before the district judge or it may remand the matter to the magistrate judge to take such further evidence as the district judge may deem necessary.

(3) A party requesting a further evidentiary hearing must serve and file a motion not later than three (3) days after the transcript of the record is certified, which motion must:

[A] describe the nature of the evidence to be proffered and its relevance to the specific objections; and

[B] contain a statement of the reason the proffered evidence could not be presented to the magistrate judge.

Related Provisions:

28 U.S.C. § 636 Jurisdiction, powers, and temporary assignment

F.R.Cr.P. 59 Matters Before a Magistrate Judge

D.Ak.LR 10.1 Form of Pleadings and Other Papers

D.Ak.LMR 3 Criminal Matters Routinely Assigned to Magistrate Judges

COMMENT: The title and of the rule and paragraph (a)(1) amended to implement new Fed. R. Crim. P. 59 making this rule applicable to review by the assigned district judge in both dispositive and non-dispositive matters.